

CBPO DRAFT GRANDFATHERING POLICY
FIFTH WORKING PAPER - (042810trk-PC draft)
Revisions per stakeholder, staff and PC 041910 comments
(WORKING DRAFT ONLY-NO RECOMMENDATION INTENDED)

Draft Transition Rules:

(1) Defined Terms: For the purpose of these Transition Rules the following definitions shall apply unless otherwise stated:

(a) “Plan of Development” means:

(i) any concept development plan (ZMAP/ZCPA/ZRTD/ZMOD), rezoning plat, or special exception plat (SPEX/SPMI) that has been subject to public hearing before the Planning Commission and forwarded to the Board of Supervisors; or

(ii) any variance, preliminary plat of subdivision, preliminary/record subdivision plat, family subdivision plat, subdivision waiver plat, AR-1 and AR-2 division plat (SBBD), subdivision exception plat, record plat, dedication plat (DEDI), construction plans and profiles, final development plan, site plan (STPL/REST/STMP), site plan revision (STPR), site plan amendment (SPAM), overlot grading plan, or erosion and sediment control plan.

(b) The “Ordinance” means the Chesapeake Bay Preservation Ordinance (“CBPO”) and the associated provisions of the Zoning Ordinance (“ZO”), Land Subdivision and Development Ordinance (“LSDO”), Erosion and Sediment Control Ordinance (“ESCO”), and the Facilities Standards Manual (“FSM”).

(c) “Grading Permit” means any permit for land disturbance issued pursuant to the ESCO, Chapter 1220 of the Codified Ordinances of Loudoun County.

(d) “Grading Plan” means any overlot grading plan or erosion and sediment control plan submitted pursuant to the ESCO, Chapter 1220 of the Codified Ordinances of Loudoun County.

(e) “Effective Date” means *[insert effective date of the CBPO]*

(f) Any other Term with initial upper case letters and not specifically defined herein shall have the same meaning as in the CBPO.

(2) Any Plan of Development which (a) has obtained issuance of a Grading Permit or Building Permit prior to the Effective Date, or (b) has been officially accepted by the County and has not become an Inactive Application (as defined in the ZO or the LSDO), has not been withdrawn, has not received a final decision, and has not expired or otherwise become void or invalid pursuant to applicable law prior to the Effective Date, or (c) is otherwise deemed to be a Pending Plan pursuant to Transition Rule (5), and which does not fully comply with the Ordinance because of actual or proposed encroachments into the Resource Protection Area (“RPA”) will not be required to obtain approval of an Exception under the CBPO in order to have development completed in accordance with such Plan of Development, provided that these Transition Rules are otherwise complied with. In the administration of the Ordinance such Plans of Development shall be treated in accordance with the following Transition Rules (3) through (7).

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(3) Construction may proceed for all work shown on any approved Construction Plans for which a Grading Permit was issued prior to the Effective Date without further action by the permittee so long as the plan remains valid. Revisions to such plans may be approved provided that such revisions do not create any new or additional non-compliance with the Ordinance such as a net increase in the area of impervious surface or the area of disturbance within the RPA. For purposes of this Transition Rule (3), "Construction Plans" includes subdivision construction plans and profiles (CPAPs), site plans, and Grading Plans.

(4) Construction may proceed for any structure for which a Building Permit was issued prior to the Effective Date without further action by the permittee provided that the structure is constructed in accordance with the Building Permit. New Building Permits for replacement house types may be issued, or minor revisions to building footprints for previously issued Building Permits may be approved, provided that such new permits or revisions do not create any new or additional non-compliance with the Ordinance such as a net increase in the area of impervious surface or the area of disturbance within the RPA.

(5) For the purposes of these Transition Rules, "Pending Plan" shall mean:

(a) Any Plan of Development which, prior to the Effective Date, (i) has been officially accepted by the County and has not become an Inactive Application (as defined in the ZO or the LSDO), and (ii) has not been withdrawn, and (iii) has not received a final decision, and (iv) has not expired or otherwise become void or invalid pursuant to applicable law, and (v) since the date of its official acceptance has been and continues to be diligently pursued; or

(b) Any preliminary plat of subdivision, preliminary/record subdivision plat, subdivision waiver plat, dedication plat, construction plans and profiles, final development plan, or site plan application submitted, or any Building Permit issued after the Effective Date, pursuant to a proffered rezoning application that was approved prior to the Effective Date, provided that the application or permit is diligently pursued. Amendments to proffered conditions (ZCPAs) may be approved as long as such amendment does not create any new or additional non-compliance with the Ordinance such as a net increase in the area of impervious surface or the area of disturbance within the RPA; or

(c) Any preliminary plat of subdivision, preliminary/record subdivision plat, subdivision waiver plat, dedication plat, construction plans and profiles, final development plan, or site plan application submitted, or any Building Permit issued after the Effective Date, pursuant to a special exception or variance application that was approved prior to the Effective Date, provided that the activity authorized is established, or any construction authorized is commenced, and diligently pursued. Amendments to such special exception and variance applications may be approved so long as the amendment does not create any new or additional non-compliance with the Ordinance such as a net increase in the area of impervious surface or the area of disturbance within the RPA; or

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(d) Any subdivision or street dedication construction plans and profiles, Grading Plans, or record plat applications submitted and accepted for review as containing all the required information, or any Building Permit issued after the Effective Date, pursuant to a preliminary subdivision plat, record plat, or site plan that was approved prior to the Effective Date, provided that the application is diligently pursued.

(6) For the purposes of determining whether a Pending Plan is being “diligently pursued” as required herein, the following shall apply, without limitation:

(a) If corrections to a plat, plan or application are or have been deemed necessary by the reviewing authority, a plat, plan or application containing the requested revisions shall be or shall have been resubmitted within the timeframe for the particular type of plan or application as follows:

(i) Grading Plans, Building Permit applications, variances, subdivision exceptions, dedication plats, subdivision waiver plats, and record plats Sixty (60) days

(ii) Construction plans and profiles, concept development plans, rezoning plats, special exception plats, preliminary plats of subdivision, preliminary/record subdivision plats, family subdivision plats, AR-1 and AR-2 division plats, final development plans, site plans, site plan amendments and site plan revisionsSix (6) Months

Resubmission of such filed plans may be approved so long as revisions to such plans do not create any new or additional non-compliance with the Ordinance such as a net increase in the area of impervious surface or the area of disturbance within the RPA.

(b) If structures and other impervious surfaces are shown in the RPA on any site plan, site plan amendment or site plan revision that qualifies as a Pending Plan filed prior to the Effective Date, such Plan must be approved within twenty-four (24) months after the Effective Date.

(c) If applicable, all required executed performance agreements and sureties, deposits, easements and fees shall be submitted within six (6) months of the date of the approval letter for construction plans and profiles and site plans or within twelve (12) months of the Effective Date, whichever is later.

(d) Grading Permits pursuant to approved construction plans and profiles, ~~or~~ approved site plans, or approved record plats, and Building Permits pursuant to approved record plats must be submitted and diligently pursued within ~~twelve (12) months~~ twenty-four (24) months after recordation of the record plat or approval of the site plan, as applicable.

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(e) If any of the foregoing timeframes for a resubmission commenced prior to the Effective Date, the applicable timeframe shall be deemed to have commenced on the Effective Date.

(f) The above time limitations may be extended only by the ~~{Board of Supervisors/~~
~~[Loudoun County Chesapeake Bay Review Board]~~ and only when the developer can demonstrate that the said timeframes cannot be met due to the acts or omissions of Loudoun County or the Commonwealth of Virginia beyond developer's control. Such extensions may be considered only when the developer, at least thirty (30) days prior to the expiration of the time limitation, notifies the Administrator in writing of the acts or omissions causing developer's inability to meet such time limitations.

(7) As determined by the Administrator, all Plans of Development that qualify as Pending Plans, except for approved Construction Plans and Building Permits referenced in Transition Rules (3) and (4) above, shall comply with the provisions of the Ordinance as follows:

(a) All developments shall comply with the provisions of the CBPO to the greatest extent possible, provided that such compliance does not preclude fulfillment of any approved proffered condition, or any approved condition of a special exception or variance, in which case such condition shall supersede the provisions of the CBPO only insofar as it conflicts with the CBPO.

(b) All development shall comply with the provisions of the CBPO to the greatest extent possible, provided that such compliance would not result in (i) a reduction of density or (ii) reduction of floor area ratio ("FAR"), ~~for (iii) the relocation of principal structures or facilities,~~
~~other-including than~~ parking facilities, as shown on the Pending Plan such that an additional legislative application would be required to obtain approval of such relocation.

(c) Where possible, a vegetated area, planted in accordance with Chapter 7 of the FSM, equal to the area encroaching into the RPA buffer area, and subject to a recorded easement, shall be established elsewhere on the lot or parcel in such a way as to maximize water quality protection and mitigate the effects of the buffer encroachment.

(d) All such Pending Plans shall be required to perform an RPA delineation in accordance with the CBPO and shall be revised, if necessary, to show the RPA boundary in accordance with such RPA delineation regardless of whether an encroachment into the RPA has been authorized by an exception under the Ordinance or by application of (7)(a) or (b) above.

(e) All such Pending Plans shall be revised to include one of the following statements in a form as approved by the Administrator: (i) a statement that the plan complies fully with the Ordinance; or (ii) a statement that the plan qualifies as a Pending Plan under these Transition Rules, stating the basis for such determination, identifying any conflicts with the Ordinance, and stating how the requirements of (7)(a), (b), and (c) above have been met.